

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STATE OF NEW JERSEY,

Plaintiff,

v.

GARY BASRALIAN,

Defendant.

CRIMINAL ACTION NO. 18-515

SUPPLEMENTAL CERTIFICATION IN
SUPPORT OF DEFENDANT'S MOTION
FOR COMPASSIONATE RELIEF

I, Tamra Katcher, am a partner at Rem Katcher Law Group, P.C. hereby state the following.

1. I am an attorney at law of the State of New Jersey and a partner at Rem Katcher Law Group, P.C. I am the attorney of record for defendant Gary Basralian in the above-referenced matter.

2. Eight months ago, the undersigned filed a motion with this Court seeking a reduction of sentence and compassionate release for Basralian under the First Step Act, 18 U.S.C. § 3582(c)(1)(A). [ECF Dkt. 31] The grounds for that application were the rapidly deteriorating conditions at FCI Ft. Dix due to the pandemic, Basralian's myriad medical conditions which were not being treated by the BOP, and the intersection of those medical conditions which had been identified as co-morbid risk factors for severe or fatal COVID-19 outcomes. The Government opposed

Basralian's motion nine days later [ECF Dkt. 32] on grounds that Basralian had failed to exhaust his administrative remedies, and even if he had exhausted them, the BOP was doing everything possible to stem the transmission of the coronavirus within the jails and thus release was not the appropriate remedy. This Court denied without prejudice Basralian's motion four weeks later on the grounds of Basralian's alleged failure to exhaust his administrative remedies. [ECF Dkt. 33]

3. On December 1, 2020, Basralian filed a brief in support of his motion for compassionate release on the grounds that his age, serious medical conditions, and inability to protect himself against the potentially fatal consequences of infection from COVID-19 warranted such relief, and further alleging that he had exhausted his administrative remedies with the prison without relief. [ECF Dkt. 34] 10 weeks later, the Government has not responded to this motion, nor has the Court ruled on the motion.

4. Five weeks later, Basralian re-filed the December motion for compassionate release. [ECF Dkt. 35] To date, five weeks later, the Government has not responded to this motion, nor has the Court addressed or even acknowledged it.

5. Undersigned counsel now files this updated certification regarding the deplorable, continuously deteriorating conditions at FCI Ft. Dix, which pose an immediate and potentially fatal threat to Basralian, and which under applicable statutes and caselaw allow for either the commutation of his sentence to home confinement.

6. FCI Ft. Dix has become the institutional face of the failure of the BOP to stem the tide of COVID-19 throughout the prison system, leading to massive infections, persistent lock-down and harsh conditions for inmates assigned to the lowest security level of detention, and denial of basic rights of prisoners such as visits with their families, exercise and library time outside of their cells, and even the most basic needs of showering, toilet, and washing of clothes.

7. In April 2020, when Basralian filed his first motion, it is almost quaint to state that there were 1.1 million cases of COVID-19 worldwide, resulting in 62,376 deaths. In November, just before Basralian filed his second motion, the numbers had increased 50-fold to 58 million worldwide resulting in 1.3 million deaths. In the United States by the end of November 2020, the numbers were 12 million cases and 250,000+ deaths. Just ten weeks later, as of this writing, the numbers in the United States are 27 million cases resulting in more than 463,000+ deaths. 2,300 people *a day* are dying of the virus in the United States. More than 100,000 have died just since the new year began.

8. The Bureau of Prisons is hardly immune from this pandemic as more than one-third of the federal inmates have *tested* positive for the virus, as have more than 10% of the staff. However, the BOP's refusal to test the inmates and staff across the board makes any assessment by them of the direness of the situation inadequate and willfully ignorant at best, and knowingly false at worst. What the BOP cannot hide are the 216 federal inmates deaths due to COVID-19 that have been recorded so

far, a bleak tally of the unnecessary suffering of those under the BOP watch that the prisons have failed.

9. Even within the broad failure of the BOP to address this pandemic, the failures at FCI Ft. Dix stand out as gross incompetence and willful dereliction of duty to do the minimum required to help alleviate suffering and protect the inmates. As of this writing, more than 1900 inmates at FCI Ft. Dix have been infected by COVID-19, and within the dormitories it is easier to quarantine those who are *not* infected rather than those who are ill. But since FCI Ft. Dix moves inmates from dorm to dorm regularly, and accepts untested inmates from other facilities who bring the virus into the prison, and the failure to test the prison staff to identify asymptomatic carriers, and the use of untested inmates to serve food to the locked-down inmates, and the shortage of staff resulting in the inmates being locked-in with each other in dormitories without sufficient clean air, masks, or space for social-distancing, it is no wonder that the spread within FCI Ft. Dix has continued unabated.

10. Another failure has been the poor implementation of former Attorney General William Barr's directive to decrease the prison population by releasing non-violent, elderly prisoners with co-morbid conditions who have suitable places to live and who (based upon lack of prior record and good behavior within the prison system) would be more likely to not pose a danger to the community if released, either temporarily or permanently. BOP records indicate the large number of inmates were released in 2020, but BOP does not segregate the compassionate release orders

from those thousands of inmates who get released every year for other reasons (most importantly completion of sentence).

11. Within FCI Ft. Dix, Basralian is the oldest inmate in the camp-level security section, and the third oldest in either camp- or low-level security. He suffers from multiple co-morbidities (outlined in prior submissions), has not had one infraction in more than a year of custody, and has a suitable and safe place to live if released. He has exhausted all of his administrative remedies within the BOP structure (also outlined in prior submissions).

12. Further, the BOP has failed to address Basralian's medical conditions while he has been incarcerated. Despite being on notice (per the PSR and the sentencing arguments of Basralian's trial counsel), the BOP has not addressed Basralian's heart, lung, or circulatory conditions by testing or doctor evaluation, despite the assurance by this Court at sentencing that BOP was equipped to deal with these issues. He has not had an echocardiogram in more than a year, he is regularly not provided his medication in a timely manner, and has not had substantive treatment by a doctor for his other conditions. This negligent treatment is despite Basralian submitting requests for medical treatment, complaints of symptoms, and forwarding correspondence from doctors regarding the need for treatment.

13. Basralian has been able to provide a timeline over the last 10 weeks of the deteriorating conditions at FCI Ft. Dix. The following, based on information and belief from communications with Mr. Basralian:

- a. On or about November 30, 2020, the number of positive cases in the compound was 439, up by over 200 individuals from the prior week. During that same period 22 members of the staff had tested positive. The reported numbers by the Bureau of Prisons differ from this information. The Bureau of Prisons reported that there were 303 prisoners who had tested positive and 28 staff members who tested positive. (www.bop.gov). The growing number of positive COVID cases amongst the prisoners and the staff was increasing exponentially the number of prisoners in quarantine. Staff members who assist with the day-to-day functioning of the prison were restricted from moving about the facility and therefore availability of services, including medical services, was and to this day remains limited.
- b. Inmates with medical conditions were and are not getting proper medical treatment. Stories abound of specific inmate illnesses and untreated conditions (including Basralian, *supra* and *infra*.) An inmate who was grossly overweight and had severe medical had been transferred to the Camp. He could not sit to use the toilet and instead would defecate in the shower, contaminating the areas used by other inmates. Another individual who is also grossly overweight acquired

a rash after testing positive for COVID in May 2020. Prison medical staff failed to treat it and left the inmate in general population.

- c. A prison doctor advised the inmate population that herd immunity in the prison system is the best way to address the spread of COVID. As a result, she has chosen to not address the needs of inmates who have tested positive for COVID and have been symptomatic. The complaints of inmates relative to COVID issues have been brushed under the rug by the staff at FCI Ft. Dix, who merely shrug off the issue by telling the inmates that "if you don't like it, you should not have come to prison."
- d. On or about November 16, 2020, an inmate from the FCI Ft. Dix camp was placed into pre-release quarantine and then tested positive. The source of the inmate's infection was never established. No other inmates in the camp were tested to determine how the COVID positive inmate had contracted the virus, nor his spread among those also in pre-release.
- e. On or about December 8, 2020 six more staff members had tested positive, further decreasing the already severe shortage of staff necessary to run the day-to-day operations of the prison. The number of inmates who have tested positive was well over 400 and the total number of staff was well over 40. The BOP website however

indicated that there were 139 inmates and 36 staff who had tested positive on that date. There was no systemic testing going on at FCI Ft. Dix to establish an accurate count of those who are positive.

- f. On or about December 10, 2020 my client had a medical appointment for the first time about back pain that he had complained of months earlier. At this appointment, the medical staff put in a request for my client to have blood work done because he told prison medical staff that no blood work had been done for an extended period of time. He also reminded prison medical staff that his cardiologist checkup was still pending and unfilled. To date, he has not been seen by a cardiologist, nor has he had his required echocardiogram. Also, during this visit my client's blood pressure was unsafely high at 163/81. This was the third blood pressure reading for the week and all three had been high. Nothing has been done since about this condition.
- g. As of December 14, 2020, there were over 500 inmates who had tested positive and most of the medical staff were also infected. The numbers reported by the Bureau of Prisons on its website for December 15, 2020 were 12 inmates and 47 staff.
- h. On or about December 17, 2020, my client put in for a new sick call visit with the medical staff. He had been suffering from episodes of

vertigo and lightheadedness. He could not determine whether the symptoms were related to his failing cardiac health. My client's four blood pressure readings were also higher than normal. Nothing was done about this condition.

- i. On or about December 22, 2020, the entire East and West wings were under quarantine. A corrections officer who was assigned to the kitchen was also in quarantine which begs the question of whether the kitchen staff/inmates had also been exposed to the virus. Simultaneously there was no systemic testing going on at the camp.
- j. As of December 23, 2020, over 500 inmates had tested positive. On December 22, 2020, the Bureau of Prisons reported positive COVID numbers for only 20 inmates and 10 staff members. There was also confirmation that the corrections officer in the kitchen did in fact test positive for COVID and several of the inmates who work in the kitchen were also ill, but the prison did not test them.
- k. As of December 26, 2020, 643 tested positive in the Low and 5 more in the Camp.
- l. On or about December 27, 2020 there were five new confirmed cases in the Camp, and Low/A Wing went into complete lockdown/quarantine. The five confirmed cases in the Camp were previously in Low/A Wing and were relocated to the Camp, thus

expanding the footprint of the virus. There were over 600 inmates who had tested positive in the Low. On December 28, 2020, the BOP website reported that 295 inmates tested positive and 11 staff members.

- m. On or about December 28, 2020, inmates in the Low/A wing were tested for COVID and the lab received the samples on December 29th. Prison officials received the results on December 31, 2020. Inmates were not notified or moved until January 4, 2021 – after the holiday weekend. As a result, inmates with positive COVID tests resided in close quarters with other inmates for several days – thereby allowing for the further spread of the virus.
- n. On or about December 29, 2020, a BOP bulletin was distributed to the inmates that addressed the surge in the number of COVID positive cases in the prison. The bulletin encouraged inmates to "follow prevention and control measures such as wearing a mask at all times; frequent sanitation, social distancing and reporting of symptoms..." It is important to note that Warden Ortiz on April 11, 2020 indicated to the inmates that social distancing within a prison facility is not possible, yet the BOP bulletin implored social distancing. Prisoners who were not in quarantine were being locked into their units for up to 14 hours a day.

- o. Over the Christmas weekend no senior staff were present and when five inmates, three who tested positive, were removed from A wing, the staff on duty was uncertain how to proceed. No testing was done and the other men on that wing were left to their own devices. Following the holiday weekend, testing was done to individuals in that area of the prison. Around the same timeframe the wings of the prison were locked down for up to 20 hours a day removing all access to the outdoors and fresh air. It is reported in the facility there over 600 positive cases although the BOP website states the numbers on December 30, 2020 as 442 COVID-positive inmates and 11 staff members. The lockdown continued until January 27, 2021.
- p. On or about December 31, 2020 12 inmates from the Low were in the hospital and one was on life support.
- q. By December 31, 2020, approximately 1000 have tested positive for COVID, however the BOP website for the same time frame is less than 1/2 that number.
- r. As of January 1, 2021, the rate of infection in FCI Ft. Dix is at approximately 50%, which is far greater than the rate of infection in the local community. Staff members at the facility are reluctant to send sick prisoners to the hospital as that would result in disclosing

that the reported numbers are inaccurate, while sick staff members continue to show up for work.

- s. On or about January 4, 2021, staff at the facility continue to move inmates from one section to another in order to circumvent reporting accurate COVID numbers. There were 31 new cases in the Camp as of that date, although their positive results were from testing conducted the previous week. The likely number of positive cases throughout the Camp is likely now over 50% of the total population.
- t. On January 5, 2021, Basralian finally had blood work done, the first time since April 2020.
- u. In early January 2020, six inmates were scheduled to be transferred out of the prison but two tested positive, delaying their release.
- v. By January 6, 2021, inmates were in lockdown for 14 1/2 hours. Prison staff directed inmates to keep their areas clean but only provided a spray bottle of an unknown liquid to the inmates, with no paper towels and no brooms. Dust continues to fall from the insulation in the ceiling, ceilings are leaking, and insulation is falling on the floor in the showers, All the while the pest infestation continues. Prison staff had taken to blaming inmates for the spread of the virus.

- w. On January 6, 2021 there were over 1,000 positive cases at FCI Ft. Dix while on January 5, 2021 the Bureau of Prisons website claimed that there were only 590 inmates and 14 staff members who tested positive.
- x. On or about January 7, 2021 inmates were still being restricted from outdoor activities and fresh air. Inmates were being punished for the spread of the virus at the prison.
- y. On or about January 8, 2021 there were 40 new positive cases in the Camp. B Wing had been tested but those results were not given to the inmates, nor actions taken by BOP to address those inmates who tested positive.
- z. On or about January 11, 2021 staff members moved inmates from one wing to another in an effort to segregate those who were negative from those who have tested positive. However, these groups of inmates had been comingling for weeks. A new inmate was brought in off the street as a self-surrender and was not quarantined.
- aa. On or about January 12, 2021 41 inmates were moved to the A Wing in an attempt to separate them from those who tested positive. However, five of those individuals eventually had a positive test and were removed after living amongst others. This begs the question of whether those five individuals contaminated the rest of the inmates.

One of the five positive COVID inmates had tested positive previously. Inmates who test positive for COVID are sharing common areas with those who have not.

bb. By mid-January 2020, the lockdown was greater than 19 hours per day.

14. Conditions have been allowed by explicit acts and omissions of the BOP to make the spread of the virus *more* possible. Examples include:

- a. The FCI Ft. Dix camp facility is infested with rodents, birds, and bugs. It is dirty and dusty. Three of the six urinals in B Wing do not work, two of the eight toilets do not work in the A Wing, one of six washers work, and four of five dryers are functioning. In the B Wing, three of six washers are working, and two of the six dryers are working. The machines which are out of service have been broken and unplugged for months. The heating system is shutting down, thus not providing heat during winter months. The hot water system regularly malfunctions thus restricting the accessibility of hot water to wash and sanitize hands and shower, among other needs for hot water, including cleaning of surfaces and kitchen equipment.
- b. The BOP has reported that the number of COVID cases at FCI Ft. Dix has decreased and the recent surge in positive cases was due to increased testing. Upon information and belief this report by the BOP

is self-serving and inaccurate. The number of positive cases in FCI Ft. Dix started to increase at the exact time that inmates from the Elkton facility were transferred in. Additionally, there has been no increased testing throughout the FCI Ft. Dix facility that would support the BOP's statement. The BOP does not consistently test individuals after quarantining to ensure that they are no longer infected with the virus. The BOP states that this is consistent with CDC guidelines.

- c. The BOP has stated that it is disinfecting all areas where a positive COVID person has previously been. This is a misstatement of what is transpiring within the prison. In fact, the staff is merely wiping down countertops and are not thoroughly disinfecting these areas. Further, no significant improvements in the ventilation system have been done at FCI Ft. Dix, failing to address a significant source of transmission by this airborne illness.
- d. The warden and members of the administration of the prison have not been seen or present on property since the pandemic started in March 2020. The staff on site are argumentative and refuse to assist inmates with any issues they may have. Inmates fear complaining to prison staff about the conditions of the prison for fear of retribution. Indeed, the warden was finally replaced in February 2021. Since the arrival of the new warden, nothing has changed at the facility.

- e. "Camp" inmates get moved into the "Low" buildings so the prison administration can report that there are no positive cases physically in the Camp. This shell-game of moving the coronavirus ball from space to space exacerbates the problem of infecting more inmates and fails to isolate those already sick.
- f. Inmates who work in the kitchen serve inmates from both A and B wings of the camp, increasing the likelihood of cross-contamination between the two wings.
- g. Staff members continue working throughout the facility without masks. There is no real effort to compel staff to wear masks, nor to punish those who don't. In the absence of any real testing procedure to identify who has the virus and who doesn't, unanimous wearing of masks is the frontline procedure to slow down the spread of the virus within the prison walls.
- h. The BOP policy of only testing inmates and staff when they are symptomatic, rather than regularly and across the board, allow both staff and inmates who subsequently do test positive to expose others while in their asymptomatic or pre-positive test phase. The corrections officer who worked in the kitchen had been sick and still came to work interacting with other staff and inmates before testing positive and then isolating.

- i. By January 13, 2021 the surge in positive COVID inmates led the case managers at FCI Ft. Dix to encourage inmates who have served 50% or more of their sentence to file for release. However, this did not lead to an increase in the number of inmates released, which suggests that it was a ruse by staff to avoid litigation in district courts about the poor conditions in the prison.
- j. There continues to be cross-contamination between the inmates in the two housing wings. COVID test results take up to seven days and in the interim inmates are comingling, allowing for cross-contamination. The corrections staff has repeatedly complained to prison management about the cross-contamination and testing procedures at the prison, to no avail.
- k. By January 15, 2021, a group of inmates organized themselves in a class action lawsuit against the BOP and filed in federal court seeking injunctive relief. See DNJ Case No. 1:21-cv-00790-RMB. The lawsuit outlines in specific detail the deteriorating conditions at the prison and the lack of efforts on behalf of prison officials and staff at FCI Ft. Dix to address the significant health issues relating to COVID-19.
- l. The interaction between the staff and the inmates has become adversarial due to the failure by BOP to provide solutions to staff for their concerns about the virus. Prison staff members were advising

inmates that they would not receive credit for courses that they had taken, and others are being told they are not eligible to take courses, just to keep staff separate from the inmates.

- m. With the increased negative publicity, lavatory and sink repairs have finally started after almost a year of being out of service. Previously the inmates had to wash their clothes while they showered and wait in line for the limited number of toilets.
- n. Inmates who have tested positive for COVID are being released back into the general population after 10 days, regardless of symptoms and without being retested to ensure that they are no longer infected.
- o. Staff have recently set up 15 bunk beds in the visiting room so that more people from the Low can be transferred to the Camp. This room is not of sufficient size to hold 30 men and allow for proper social distancing as suggested by prison staff.
- p. Just this month, the vaccine has started to be distributed to people in the prison, but it is haphazard, arbitrary, and without regard to Center for Disease Control guidelines. Despite being the oldest prisoner in his unit and one of the oldest in the prison, and afflicted with co-morbid conditions, Basralian still has not been vaccinated.
- q. My client's private cardiologist remains concerned about his blood pressure and wanted to change his blood pressure medication. As

previously stated, my client's blood pressure has remained high notwithstanding weight loss and exercising. The medical staff advised my client that he must see the prison cardiologist to adjust his medication. However, my client requested to see a cardiologist 11 months ago and that appointment has yet to be scheduled. The medical staff's indifference to my client and other inmates' medical needs continues as no specialists have been brought in to care for those of ailing health. Inmates who have heart issues, cancer issues, intestinal issues, dental and skin issues have not been seen by specialists. Throughout, Basralian continues to be unable to get an appointment with the physician to schedule a cardiology appointment, his blood pressure remains high, his private doctor has recommended that his blood pressure medicine be adjusted, but prison medical staff have willfully failed to address these issues.

15. Media reports over the last two months have shown how the BOP dramatically under-reports the numbers of ill inmates, as well as over-states the efficacy of the minimal efforts by the BOP to hold down the spread of the virus.

- a. On December 30, 2020, the Burlington Times reported that the number of COVID cases in FCI Ft. Dix makes this location the prison with the most active cases throughout the BOP network.

(<https://www.burlingtoncountytimes.com/story/news/2020/12/30/fci-fort-dix-sees-2nd-covid-outbreak-active-cases-top-450-prison-coronavirus-new-jersey/4092150001/>).

- b. On January 6, 2021, NJ.com reported that FCI Ft. Dix is the “epicenter of the virus in the federal prison system.” The article also cites reports consistent with Mr. Basralian’s observations of lack of medical care, extreme sickness, and despair amongst inmates. Also noted are the complete lack of plans by the BOP to handle the COVID situation at FCI Ft. Dix notwithstanding political pressure months ago to implement them. (<https://www.nj.com/news/2021/01/absolute-chaos-and-terrifying-the-coronavirus-is-running-rampant-through-nj-prison-again.html>).
- c. On January 25, 2021, the Burlington Times reported what the BOP considered the first inmate death from COVID. The inmate had several co-morbid conditions which increased his vulnerability to COVID. The inmate filed for compassionate relief in April 2020, citing his medical conditions and fear of dying from COVID. His motion was denied. On December 28, 2020, the inmate tested positive for COVID and subsequently was transferred to a local hospital where he died from the virus and the lack of treatment. (<https://www.burlingtoncountytimes.com/story/news/2021/01/25/fci->

fort-dix-sees-first-inmate-death-due-covid-19-coronavirus-federal-prison-south-jersey/6701369002/).

- d. On January 27, 2021, because of the negative publicity regarding the conditions at FCI Ft. Dix which lead to the COVID-related death of an inmate, signs stating "social distance" and "wear face masks" have been taped to the walls.
 - e. On January 28, 2021 at 7am, a group of BOP personnel toured the Camp facility. An hour earlier, orderlies were told to begin cleaning the facilities. Reports were provided to the group that the insulation and leaks from the 15 foot high ceilings were a result of inmate destruction of the property. Following the tour of the Camp, inmates were locked out of the gym. Simultaneously, inmates remain restricted from any outdoor activities. Inmates were now using bathrooms and cramped sleeping quarters for doing daily exercises.
16. From the above, it is clear that Basralian meets the criteria for compassionate release. He is faced with a potentially fatal threat to his life. He has exhausted his administrative remedies for relief here sought to no avail, indeed to the painfully indifferent response of BOP. He will be released in two years or less by operation of statute and prison regulations, if he survives that long. While the situation at the place of imprisonment gets worse by the day.

I certify that the foregoing statements made by me are true and accurate to the best of my knowledge and that I am subject to punishment should any of these statements be found to be willfully false.

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Dated: 2/11/2021